

Service = 24 hr w/ travel expense
 bill for services cost + basis.
 cost of parts basis.

Want tobacco exclusivity
 even if we cancel.

Service agreement.

AGREEMENT

This LOCATION BASED ENTERTAINMENT SYSTEM DEVELOPMENT AGREEMENT (the "Agreement"), dated as of October 1996, is entered into and between PHILIP MORRIS INCORPORATED, a Virginia corporation with offices at 120 Park Avenue, New York, New York 10017 ("Philip Morris"), and FANTASY FACTORY, INC., a California corporation with offices at 1200 Third Avenue, Suite 1550, San Diego, CA 92101 ("Fantasy Factory").

RECITALS

A. In connection with its MARLBORO BAR PROGRAM (the "Promotion"), Philip Morris desires to procure a location based Entertainment System (the "Simulator") and Interactive Video Experiences (the "Experience").

B. Fantasy Factory desires to furnish such a Simulator and Experiences which work in conjunction with the Simulator together with continuing support maintenance of the Simulators and Experiences.

AGREEMENT

NOW THEREFORE, in consideration of the promises contained herein, the parties agree as follows:

1. **SERVICES.** In connection with the Promotion, Fantasy Factory will provide the following services (the "Services") related to the design and production of a Simulator and Experiences which work in conjunction with the Simulator:

- a. Meet with client;
- b. determine clients needs;
- c. consult with client on type and specifications of Simulator and Experiences;
- d. define scope of project;
- e. script Experiences;
- f. create story-boards of Experiences;
- g. design Simulator structure;
- h. coordinate approvals of designs and story-boards with client and client's consultants;
- i. produce and direct Experiences;
- j. supervise digitization of Experiences;
- k. choreograph Experiences for motion and inter-activity;
- l. procure hardware for use in Simulator;
- m. design Simulator interactive interfaces;
- n. supervise the manufacture and assembly of Simulator;
- o. procure and assemble electronic interfaces;
- p. editing finished video and sound outputs;
- q. mounting electronics on Simulator;
- r. write and debug interactivity software;
- s. coordinating 3-D visual outputs to interface with Marlboro's existing projectors with custom designed and manufactured 3-D optical fittings;
- t. oversee and manage entire project;
- u. coordinate and cause the shipment of completed Simulators to client;
- v. train client's employees on the use and maintenance of Simulator;
- w. provide maintenance and support to Simulators deployed by client;

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2. **MATERIALS.** Fantasy Factory will procure and provide all necessary equipment to ensure complete and working Simulators and Experiences which work in conjunction with the Simulator (collectively, the "Materials"). The Materials will include all manuals, hardware and software sets, and other required materials including, but not limited to, the following:

Fantasy Factory will deliver a complete and fully functional prototype Simulator approximately, three foot tall by three feet deep by three foot wide with base of sufficient size to support the structure and occupants of maximum weight of 300 lbs. Attached to the structure shall be a fiberglass chair with three point restraint system and foot rests. The chair shall be cantilevered out from the structure on a 24" long arm made of steel. The arm, which is hydraulically controlled, is capable of 15 degrees minus/6 degrees plus pitch; 15 degrees plus/minus roll; and 18" vertical travel ("heave") with acceleration rates of 1.8 g's maximum vertical, 1.6 g's maximum roll or pitch.

The prototype shall utilize a companion structure housing an IBM based computer provided by the client having minimum performance characteristics approved by Fantasy Factory. The companion structure shall be approximately the size of a typical desk top computer with attached 17" monitor. The computer shall interface the Simulator's chair motion with the video Experience projected to the occupant in the chair. An interactive cuing device (eg. steering wheel) shall be mounted or given to the occupant on a removable mount to enable the occupant to interact with the Simulator Experience. Fantasy Factory shall lend, at no charge, for use in the prototype the necessary projector, display screen, computer and 3-D optical system along with a demo Experience all of which shall remain the property of Fantasy Factory.

The demo Experience shall be approximately 2 - 3 minutes in length and shall have a basic man against nature subject matter incorporating a first person video of a rider on an All Terrain Vehicle (ATV) which is interactive with the occupant of the Simulator chair. As script of the basic nature of the Experience is attached hereto as Exhibit "E".

The prototype Simulator will include written operation instructions all necessary software and all necessary electronic hardware, cabling and fittings required for full operation of the Simulator and Experience.

Fantasy Factory agrees to build and deliver additional Simulators and Experiences similar in configuration, design and manufacture to the prototype at the pricing set forth herein.

No substitutions to the Materials may be made by Fantasy Factory without the prior written approval of Philip Morris. In addition, Fantasy Factory will provide all materials and equipment necessary to ensure the complete and successful operation of the Simulator and corresponding Experiences, even if any such items are not specifically identified in the Agreement.

3. **REPORTS AND DOCUMENTATION.** Fantasy Factory will prepare, update and revise, ~~from time-to-time~~, written reports and other documentation about the Materials in a form satisfactory to and as reasonably requested by Philip Morris.

4. **LABOR.** Fantasy Factory will provide personnel and services in accordance with the Agreement, and such personnel will possess the required training and certification to ensure that the Simulator and Experiences are completed in a timely and efficient manner and in accordance with the highest standards of quality and workmanship.

Fantasy Factory will assign Chris Altare to the Promotion, who will have full authority to represent Fantasy Factory and will serve as Fantasy Factory's principal contact for job coordination and conflict resolution.

Fantasy Factory will be responsible for coordination with the work of others on the Promotion to

assure timely and orderly delivery, and operation of the Simulator and Experiences which work in conjunction with the Simulator.

5. **SCHEDULE.** Time is of the essence with respect to the performance of both party's obligations hereunder. Fantasy Factory will deliver one functional Prototype Simulator unit with one Experience in accordance with the specifications set forth above in paragraph 2 and Exhibit "A" (for prototype commencing from the date of contract). Thereafter, Fantasy Factory shall deliver additional Simulators and Experiences as set forth on either Exhibit "A-1" (for completion of thirty or sixty single seat Simulators commencing on date of election by Philip Morris of single seat Simulator), or "A-2" (for completion of thirty double chair Simulators commencing on the date of election by Philip Morris of double seat Simulators). Completion of Experience production shall follow the timetable set forth on Exhibit "A-3" (commencing upon the election of the type and quantity of Simulator units selected by Philip Morris).

If either party fails to deliver or cooperate with the other in delivering any Materials, create the Simulator and Experiences which work in conjunction with the Simulator or to perform Services on or before the dates specified herein, any such failure will constitute a material breach of the obligations hereunder.

6. **ASSIGNMENT OF RIGHTS.** Fantasy Factory hereby irrevocably transfers and assigns any and all of its right, title, and interest in and to the Experiences including all electronic media and interfaces related thereto, developed pursuant to the agreement (the "PM Property"), including but not limited to all copyrights, trade secrets and trademarks, to Philip Morris, except as specifically set forth in Exhibit D. The PM Property will be the sole property of Philip Morris and Philip Morris will have the sole right to determine the treatment of any such PM Property, including the right to keep them as trade secrets, to file registrations for copyright or trademark on them in its own name, or to follow any other procedure that Philip Morris deems appropriate. Fantasy Factory agrees: (a) to disclose promptly in writing to Philip Morris all PM Property; (b) to cooperate with and assist Philip Morris to apply for, and to execute any applications and/or assignments reasonably necessary to obtain, any copyright, trademark or other statutory protection for the PM Property in Philip Morris' name as Philip Morris deems appropriate; and (c) to otherwise treat all PM Property as "Confidential Information", as defined herein. These obligations to disclose, assist, execute and keep confidential will survive and expiration or termination of the Agreement.

7. **TERM.** The term of the Agreement will commence on the contract date and will continue in effect until the completion and delivery of the Simulators and Experiences ordered by Philip Morris unless terminated earlier as provided herein.

8. **TERMINATION.** Philip Morris may terminate the Agreement at any time, with cause, upon written notice to Fantasy Factory. Upon Fantasy Factory's receipt of notice of termination, Fantasy Factory will immediately cease providing services and incurring expenses hereunder, unless otherwise approved in writing by Philip Morris.

9. **POINT OF CONTACT.** Fantasy Factory will obtain authorizations, information and approvals reasonably requested from Philip Morris during the performance of the Agreement from Senior Brand Manager, Marlboro ~~Experiences~~ (the "Point of Contact"). Philip Morris may change the designated Point of Contact by written notice to Fantasy Factory.

10. **WARRANTY.** Fantasy Factory hereby warrants that the completed work performed by it pursuant to the Agreement, including all services, materials and labor, will be free from defects in design, workmanship and materials for a period of ~~ninety~~ days from the date of delivery of any Simulator or Experience. The warranty by Fantasy Factory hereunder will include a warranty that Fantasy Factory will have full title to all property not assigned to Philip Morris pursuant to paragraph 6 hereof and that such property do not infringe the trademark, copyright, patent or other intellectual property right of any third party.

Discussion
pt w/
lawyers.

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Is this sufficient to cover? 3
→ 10 months
→ 1 year

11. **WORK IN PROGRESS REVIEWS.** During the performance of the Agreement, Philip Morris and its duly authorized representative will have the right to inspect Fantasy Factory's work in progress at any time.

12. **FINAL ACCEPTANCE.** The final acceptance of the Materials and Services will be made by Philip Morris after Fantasy Factory has completed the Simulator and Experiences, which work in conjunction with the Simulator, demonstrated that the Simulator and Experiences which work in conjunction with the Simulator is in conformance with the specifications contained herein and has furnished all the required Materials, all as more fully described in Exhibit "E".

13. **PAYMENT SCHEDULE.** Fantasy Factory will submit a monthly invoice for all amounts due hereunder. All invoices submitted by Fantasy Factory must contain a detailed application for payment substantially in the form of Exhibit "C" attached hereto, including (a) a detailed explanation of the Materials furnished, with receipts and back-up documentation available upon request, (b) a detailed explanation of any reimbursable expenses actually incurred, with receipts and back-up documentation available upon request, and (3) a waiver of liens for all Materials furnished. Expenses over \$500 that are incurred by Fantasy Factory and that are appropriately reimbursable by Philip Morris but that are not included on Exhibit "B" must be approved in writing in advance by Philip Morris. Each invoice pursuant to which Fantasy Factory seeks payment from Philip Morris will reflect a 10% deduction from the total invoiced amount sought from Philip Morris pursuant to such invoice. Upon final completion and testing of the Simulator and adventure(s) which work in conjunction with the Simulator by Fantasy Factory and final acceptance (as defined in Section 12) by Philip Morris, Fantasy Factory will submit an invoice for the cumulative total of all prior 10% invoice deductions. Philip Morris will pay Fantasy Factory in accordance with each invoice within 30 days of Philip Morris' receipt of each such invoice.

Without the prior written approval of Philip Morris, in no event will the total Compensation invoiced under the Agreement exceed an amount to be agreed upon after Philip Morris selects the type and number of Simulator units it desires to order.

14. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF PHILIP MORRIS.** Philip Morris represents to Fantasy Factory the following:

14.1 **Authority.** Philip Morris has all necessary power and authority to execute, deliver and perform its obligations under the Agreement and that the execution, delivery and performance by Philip Morris of the Agreement has been duly authorized by all necessary action on the part of Philip Morris and requires no additional consent to be effective.

14.2 **Enforceability.** The Agreement constitutes a legal, valid and binding obligation of Philip Morris enforceable against Philip Morris in accordance with its terms except to the extent that enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency or moratorium laws affecting the enforcement of creditors' rights or by the principles governing the availability of equitable remedies.

14.3 **Capitalization.** Philip Morris is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete its obligations under the Agreement.

15. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF FANTASY FACTORY.**

Fantasy Factory represents to Philip Morris the following:

15.1 **Authority.** Fantasy Factory has all necessary power and authority to execute,

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Subcontractors In connection with Fantasy Factory's obligations set forth herein, Fantasy Factory may retain the services of subcontractors to design, manufacture or construct portions of the Simulator or any component thereof. Fantasy Factory may also retain the services of subcontractors to design, produce, or create the Experience or any part thereof. Attached hereto as Exhibit "F" is a schedule of the subcontractors Fantasy Factory will use to fulfill its obligations hereunder. Fantasy Factory shall supplement the schedule as subcontractors are retained. Additionally, Fantasy Factory shall require all subcontractors affiliated with this Agreement to execute an acknowledgement of contracting and their agreement to be bound by the terms and conditions of this Agreement.

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Subcontractors paragraph:

Exhibit F

Need names of
Subcontractors

deliver and perform its obligations under the Agreement, and that the execution, delivery and performance by Fantasy Factory of the Agreement has been duly authorized by all necessary action on the part of Fantasy Factory and requires no additional consent to be effective;

15.2 **Enforceability.** The Agreement constitutes a legal, valid and binding obligation of Fantasy Factory enforceable against Fantasy Factory in accordance with its terms except to the extent that enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency or moratorium laws affecting the enforcement of creditors' rights or by the principles governing the availability of equitable remedies; and

15.3 **Capitalization.** Fantasy Factory is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete its obligations under the Agreement.

15.4 **Title to Simulator and the Experiences.** Fantasy Factory warrants that the title to the Simulator and the Experiences will be good, that the Simulator and the Experiences will be free from all security interests, claims, demands, liens and other encumbrances. Any loss or damage to the Simulator prior to completion and acceptance of the Simulator and Experiences which work in conjunction with the Simulator will be the sole risk of Fantasy Factory. Fantasy Factory will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, any such further acts, instruments, papers and documents as may be necessary to transfer good title to Philip Morris to the material without any additional compensation. All material furnished by Fantasy Factory in the course of Fantasy Factory's performance of Services hereunder will belong to Philip Morris, except as set forth in Exhibit "D".

15.5 **Intellectual Property.** Fantasy Factory further represents and warrants that it has no knowledge of any claim of infringement of any patent, copyright, trademark, or misappropriation of any trade secret or other proprietary right of any third party as a result of the performance of the obligations under the Agreement, the creation and development of the material and any other acts contemplated by the Agreement.

15.6 **Cooperation.** Fantasy Factory acknowledges that the Simulator and Experiences which work in conjunction with the Simulator is an integral part of the Promotion and that other contractors, suppliers and Philip Morris personnel will perform in connection with the Promotion. Fantasy Factory will cooperate and coordinate with Philip Morris and all Promotion contractors and consultants in furthering the interests of Philip Morris in conducting the Promotion, consistent with the terms and conditions of the Agreement.

15.7 **Insurance.** Within 10 days of execution of the Agreement, Fantasy Factory will, at its own expense, procure, and deliver to Philip Morris certificates of insurance, issued by insurers acceptable to Philip Morris, evidencing coverage for (1) comprehensive/commercial general liability, including products/completed operations, and contractual liability with a combined single limit of no less than \$1,000,000 per occurrence for bodily injury, including personal injury and property damage, (2) statutory workers' compensation coverage meeting all state and local requirements, including coverage for employers' liability with limits of no less than \$500,000 per occurrence, and (3) comprehensive automobile liability coverage for all owned, non-owned and hired vehicles, with bodily injury limits of no less than \$100,000 per person, \$300,000 per accident, and property damage limits of no less than \$300,000 per accident. The insurance certificates required by clauses (1) and (2) must name Philip Morris, its affiliates, agents, representative, employees and assigns as additional insured and must state that Philip Morris will be provided at least 30 days' advance, written notice of a cancellation or modification of the insurance. The insurance must be primary coverage without right of contribution from any other Philip Morris insurance. Insurance maintained by Philip Morris is for the exclusive benefit of Philip Morris and will not inure to the benefit of Fantasy Factory. Fantasy Factory assumes responsibility for ensuring that all subcontractors utilized by Fantasy Factory in connection with the Agreement are adequately insured. The

insurance coverage limits set forth above may be obtained by Fantasy Factory with a combination of primary and excess insurance policies.

15.8 Compliance with Laws. Fantasy Factory warrants that its performance at all times will be in compliance with applicable standards and applicable local, state and federal laws and regulations, including those related to employment, payroll taxes, non-discrimination, OSHA and other governmental compliance. Any fines or other penalties incurred by Fantasy Factory or its agents, employees or subcontractors for noncompliance with any laws, rules, regulation or ordinances with which compliance is required herein or by applicable law will not be reimbursed by Philip Morris, but will be the sole responsibility of Fantasy Factory. Fantasy Factory will indemnify and hold Philip Morris harmless from any fines or penalties imposed on Philip Morris as a result of Fantasy Factory's performance under the Agreement. In the event of a conflict between applicable codes and standards, Fantasy Factory will adhere to the more stringent requirements.

15.9 Audits and Records. Fantasy Factory, its employees and agents will maintain detailed and accurate books and records of account with respect to activities undertaken on behalf of Philip Morris, including original receipts. Record of disbursements must indicate the check number, dollar amount, identity of the payee and reason for the expenditure. Fantasy Factory will provide periodic reports as and when requested by Philip Morris and a final accounting within 60 days of the completion of all Services. The final accounting must include an itemization of all expenses incurred and must be certified by an appropriate officer or authorized representative of Fantasy Factory. During the term of the Agreement and for six months following the expiration, cancellation or termination of the Agreement, at the request of Philip Morris, Philip Morris or its designated agent may inspect, review and copy Fantasy Factory's books and records at reasonable times during normal business hours upon reasonable, advance notice to Fantasy Factory and at the expense of Philip Morris.

*
Source
Code
Escrow

There is none
per say.

Every day
is off the
shelf motion
software.

Video not
computer
generator
graphics.

We will
own
images.

16. DEFAULT BY FANTASY FACTORY. During the term of the Agreement, the occurrence of one or more of the following events will be deemed a "Fantasy Factory Default":

16.1 If Fantasy Factory defaults in any Material respect in the observance or performance of any covenant, condition or obligation of Fantasy Factory contained herein, which without limitation includes: Fantasy Factory's failure to cure, within thirty (30) days of any written notice of default of any obligation, covenant, warranty or agreement provided herein; or Fantasy Factory makes any material false or misleading statement in any certificate or document made or given pursuant to the Agreement, and such default continues for thirty (30) days after written notice to Fantasy Factory specifying the default and demanding that the same be remedied;

16.2 If Fantasy Factory (a) files a petition commencing a voluntary bankruptcy or similar proceeding under any applicable bankruptcy or similar law, (b) is declared bankrupt or insolvent under any law relating to bankruptcy, or (c) admits in writing its inability to pay its debts as they become due; or

16.3 If a custodian, receiver, trustee or liquidator is appointed in any proceeding brought against Fantasy Factory and is not discharged within 60 days after such appointment.

17. DEFAULT BY PHILIP MORRIS. During the term of the Agreement, the occurrence of one or more of the following events will be deemed a "Philip Morris Default":

17.1 If Philip Morris defaults in any material respect in the observance or performance of any covenant, condition or obligation of Philip Morris contained herein, including any material false or misleading statements in any certificate or document made or given by Philip Morris pursuant to the Agreement, and such default continues for ten (10) days after written notice to Philip Morris specifying the default and demanding that the same be remedied;

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17.2 If Philip Morris (a) files a petition commencing a voluntary bankruptcy or similar proceeding under any applicable bankruptcy or similar law; (b) is declared bankrupt or insolvent under any law relating to bankruptcy, or (c) admits in writing its inability to pay its debts as they become due; or

17.3 If a custodian, receiver, trustee or liquidator is appointed in any proceeding brought against Philip Morris and is not discharged within 60 days after such appointment.

18. PHILIP MORRIS REMEDIES.

18.1 Nonconforming Materials. If Philip Morris discovers that any of the Materials supplied by Fantasy Factory hereunder fails to conform to the warranties set forth in Section 9, then Fantasy Factory will, at no cost to Philip Morris, promptly replace or modify any such nonconforming Materials so that it conforms to the above warranties. The cost of transporting repaired or modified Equipment and Materials will be borne by Fantasy Factory. The repaired or modified item will be covered by the warranty given above, and nonconforming conditions will be subject to this remedy. Nothing in this section will be deemed to prohibit Philip Morris from exercising its rights to recover any and all damages suffered as a result of the breach of warranty.

18.2 Timeliness. Fantasy Factory will perform its remedial obligations hereunder in a timely manner consistent with Philip Morris' reasonable requirements and the continuous, uninterrupted operation of the Promotion and the maintenance of quality and uninterrupted services during the Promotion. If Fantasy Factory is unable to remedy such nonconformity during a time period consistent with Philip Morris' requirements, Philip Morris may undertake to remedy the nonconformity and in such case Fantasy Factory will reimburse Philip Morris for any reasonable expenses thereby incurred.

18.3 Damages. Upon the occurrence of any Fantasy Factory Default, Philip Morris may terminate the Agreement by written notice to Fantasy Factory and recover from Fantasy Factory as damages, not as a penalty, an amount equal to the additional cost of completing the Simulator and Experiences which work in conjunction with the Simulator as a consequence of the Fantasy Factory Default.

18.4 Cost and Expense. Fantasy Factory will be liable for the costs and expenses incurred by Philip Morris by reason of the occurrence of any Fantasy Factory Default, or the exercise of Philip Morris' remedies with respect thereto, including all costs and expenses incurred in connection with the completion of the Simulator and adventure(s) which work in conjunction with the Simulator or any suit or action necessary to enforce Philip Morris' rights and remedies.

18.5 Right of Offset. If any Fantasy Factory Default as defined in Section 16 has occurred and is continuing, Philip Morris will have the right to retain out of any amount payable to or for the amount of Fantasy Factory an amount sufficient to provide Philip Morris security for the performance of the obligations of Fantasy Factory under the Agreement that have not been performed as a result of such Fantasy Factory Default. At such time thereafter as no Fantasy Factory Default is continuing, such amount (less any damages Philip Morris will have incurred as a result of the Fantasy Factory Default, will be paid promptly to Fantasy Factory.

18.6 Indemnification Offset. If any person or entity asserts a claim or lien against Philip Morris, the Equipment and Materials or any other property of Philip Morris, which claim or lien is chargeable to or arises out of Fantasy Factory's performance of the Agreement or the provisions of the Equipment and Materials, Philip Morris will have the right to retain out of any payments due to Fantasy Factory an amount sufficient to protect Philip Morris fully from all claims, losses, damages and expenses related to such claim or lien until the lien has been removed or the claim has been terminated or released to Philip Morris' satisfaction.

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18.7 **Nonexclusivity.** Philip Morris' remedies set forth in this Section 17 will not be exclusive, but will be cumulative and may be exercised concurrently or consecutively, and will be in addition to all other remedies Philip Morris may have under the Agreement or provided by law.

19. **FANTASY FACTORY REMEDIES.**

19.1. **Damages.** If any Philip Morris Default as defined in Section 16 has occurred and is continuing, Fantasy Factory may (a) terminate the Agreement by written notice to Philip Morris and (b) recover from Philip Morris any damages proximately caused by the Philip Morris Default.

19.2 **Nonexclusivity.** Fantasy Factory's remedies set forth in Section 18, are not exclusive, but will be cumulative and may be exercised concurrently or consecutively, and are in addition to all other remedies Fantasy Factory may have under the Agreement or provided by law.

20. **FANTASY FACTORY'S INDEMNITY.** Fantasy Factory agrees to indemnify and hold harmless Philip Morris, its affiliates and their respective officers, employees, directors and agents from all claims, liabilities, costs and expenses, including reasonable attorneys' fees that arise from, or may be attributable to errors, omissions or fault of Fantasy Factory including, but not limited to any claim of trademark, patent, copyright or trade secret infringement. Fantasy Factory's obligations to indemnify and hold harmless will survive the termination of the Agreement.

21. **SUSPENSION.** Upon written notice from Philip Morris, Fantasy Factory will suspend the provisions of Services or Equipment and Materials as provided herein for such time as Philip Morris may direct. Upon receipt of Philip Morris' suspension notice, Fantasy Factory will not place further orders or enter into further subcontracts relating to the suspended work without Philip Morris' written approval. Philip Morris will not be liable for the cost of any unauthorized orders placed or subcontracts entered into by Fantasy Factory during any period of suspension.

22. **DISPUTE RESOLUTION.**

22.1 **Intent.** It is the intention of the parties to make a good faith effort to resolve, without resort to litigation, any Dispute (as defined below) according to the procedures set forth in this Section. A "Dispute" is any dispute, controversy or claim arising out of or relating to the Agreement or any breach, termination or invalidity hereof.

22.2 **Procedure.** Fantasy Factory's and Philip Morris' designated representative will attempt to resolve all Disputes by negotiation. In the event a Dispute cannot be resolved promptly by Fantasy Factory's and Philip Morris' representatives, each party will immediately designate a senior executive with authority to resolve the Dispute. The designated senior executives will promptly begin discussions in an effort to agree upon a resolution of the Dispute. If the senior executives do not agree upon a resolution of the Dispute within 10 days of the referral to them, either party may elect to abandon negotiations. If a Dispute cannot be resolved pursuant to the procedures outlined in this Section, the parties may pursue any remedy available to them at law or in equity.

23. **GENERAL**

23.1 **Independent Contractor.** Fantasy Factory is an independent contractor, and the Agreement will not be construed to create an association, partnership, joint venture, relation of principal and agent or employer and employee between Philip Morris and Fantasy Factory or its agents within the meaning of any federal, state or local law. Fantasy Factory will not enter into any agreement, oral or written, on behalf of Philip Morris or otherwise obligate Philip Morris without Philip Morris' advance written approval. It will be the duty of Fantasy Factory, and not of Philip Morris, to control directly the time and manner of the work and services to be performed by the employees of Fantasy Factory and to comply with

all applicable federal, state and local laws, ordinance and regulations applicable to such employees.

23.2 Confidentiality and Confidential Information. Fantasy Factory, its employees and agents will hold strictly confidential the existence and terms of the Agreement and all information and materials provided by Philip Morris to Fantasy Factory related to the Promotion or the Agreement. The information and material provided by Philip Morris or obtained by Fantasy Factory in connection with the performance of the Agreement will remain the property of Philip Morris. Fantasy Factory will not use such information and materials for any purpose other than to fulfill its obligations under the Agreement and will cause the information and materials to be retained in complete confidence and prevent the improper use or disclosure thereof by Fantasy Factory's employees, agents, and subcontractors. Fantasy Factory will require all subcontractors to enter into signed confidentiality agreements with Fantasy factory in a form approved in advance by Philip Morris, and will actively enforce the terms of such confidentiality agreements. If Fantasy Factory is requested or required to disclose confidential information to a third party in connection with valid legal process or any ongoing civil or criminal investigation, or any judicial or administrative proceeding, Fantasy Factory will comply with the request or requirements only after providing notice of the request or requirement to Philip Morris so that Philip Morris may, if it chooses, seek an appropriate protective order. Upon termination or expiration of the Agreement, or within 30 days thereafter, Fantasy Factory will return all materials to Philip Morris. Fantasy Factory will not disclose the terms or the existence of the Agreement to third parties without the prior written consent of Philip Morris. Fantasy Factory's obligation to maintain confidentiality will survive the termination or expiration of the agreement.

23.3 Governing Law. The statutes and judicial interpretations of the State of New York applicable to agreements executed and to be performed entirely within the State of New York will govern the validity and construction of the Agreement without regard to choice of law provisions.

23.4 Nonwaiver. The failure of either party to demand strict performance of the terms hereof or to exercise any right conferred hereby will not be construed as a waiver or relinquishment of its right to assert or rely on any such term or right in the future.

23.5 Severability. The remainder hereof will not be voided or otherwise affected by the invalidity of one or more of the terms herein.

23.6 Assignment and Subcontracting. Except as permitted pursuant to the Agreement, Fantasy Factory will not assign, subcontract or otherwise delegate any of its rights or obligations hereunder without Philip Morris' prior written consent.

23.7 Survival. All warranties, indemnities, intellectual property and confidentiality rights and obligations provided herein will survive the termination, completion or cancellation hereof.

23.8 Amendments. No amendment, modification or waiver of any term hereof will be effective unless set forth in writing signed by Philip Morris and Fantasy Factory.

23.9 Headings. Headings contained herein are inserted for convenience and will have no effect on the interpretation or construction hereof.

23.10 Publicity. Each party agrees that no information relative to the Agreement will be released for publication, advertising or any other purpose without the other party's prior written consent.

23.11 Counterparts. The Agreement may be executed in any number of counterparts, each of which will be deemed the original, but all of which when taken together will constitute one and the same documents.

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23.12 **Negotiated Agreement.** The Agreement and the exhibits and schedules thereto represent the negotiated agreement of both parties and will not be construed against a drafting party. In the event of any conflict or inconsistency between the Agreement or any of the exhibits or schedules thereto, the terms of this executed Agreement will control.

23.13 **Entire Agreement.** The Agreement constitutes the entire agreement of the parties with respect to the subject matter and supersedes any prior or contemporaneous agreement or understanding between the parties. No course of dealing, no usage of trade and no course of performance will be used to supplement or explain any terms, condition or instruction herein, nor be deemed to effect any amendment.

23.14 **Notices** Notices provided will be in writing and sent by certified mail, return receipt requested. Notices to Fantasy Factory will be sent to Anton Handal, 1200 Third Avenue, Suite 1550, San Diego, CA 92101. Notices sent to Philip Morris will be sent to Philip Morris Incorporated, 120 Park Avenue, New York, New York 10017, Attention: Category Directory, Marlboro.

IN WITNESS WHEREOF, the parties hereto have entered into this Services and Equipment Agreement as of the date first written above.

FANTASY FACTORY SYSTEMS, INC.

By: _____
Name: _____
Title: _____

PHILIP MORRIS INCORPORATED

By: _____
Name: _____
Title: _____

CONFIDENTIAL

Exhibit A

Calendar days.

Fantasy Factory

PROTOTYPE TIMELINE P.M. PROJECT 10/16/96

DAY 1	DAY 2	DAY 3	DAY 4	DAY 5	DAY 10	DAY 20	DAY 22
START PROJECT	FINALIZE DESIGN OF UNIT	CONFER WITH WW ON DESIGN	MAKE PARTS LIST	PROCURE PARTS (5 DAYS)	START BUILD OF CHAIR (10 DAYS)	DEBUG CHAIR (2 DAYS)	DESIGN INTERACTIVE CONTROLLER FOR EXPERIENCE
VIDEO EXPERIENCE (RUNNING CONCURRENTLY WITH ABOVE TIMELINE)							
DAY 7	DAY 10	DAY 12	DAY 13	DAY 14	DAY 16	DAY 23	DAY 25
FINALIZE STORY-BOARD	CLIENT APPROVAL OF STORY-BOARD	FILM DEMO EXPERIENCE	EDIT FILM	VIEW FILM FOR MUSIC	ADD SOUND TRACK	FINAL DIGITIZED EXPERIENCE	MOTION TRACK ADDED

ADD SEVEN POSSIBLE MURPHY DAYS. TOTAL DAY OUT IS 41.

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CONFIDENTIAL

~~Exhibit A~~

Fantasy Factory

COMMENCING UPON NOTICE
BY PHILIP MORRIS

PRODUCTION TIMELINE—3 EXPERIENCES—P.M. PROJECT—10/16/96

DAY 7	DAY 13	DAY 19	DAY 21	DAY 24	DAY 29	DAY 44	DAY 45	DAY 48
STORYBOARD EXPERIENCE 1, 2 & 3	CLIENT APPROVAL OF STORY- BOARDS	FINISH FILMING THREE EXPERIENCES	FINISH VIEWING FOR EDIT	VIEW FILMS FOR MUSIC	FINISH SOUND TRACKS	FINISH EDITING VIDEOS	SHOW VIDEOS TO CLIENT FOR APPROVAL	CLIENT APPROVAL OF VIDEOS
DAY 55	DAY 75	DAY 78	DAY 79	DAY 80	DAY 86			
FINALIZE CLIENT CHANGES TO VIDEOS	FINALIZE DIGITIZING EXPERIENCE WITH INTERACTION	TEST INTEGRATED SYSTEM	DEBUG	TEST FINISHED SYSTEM	SHIP EXPERIENCES			

CONFIDENTIAL

Fantasy Factory

COMMENCING UPON NOTICE
BY PHILIP MORRIS

10/17/96

09:37 FAX 619 757 8986

ALTARE ADVANCED

PRODUCTION TIMELINE—30-60 UNITS—SINGLE CHAIR DESIGN—P.M. PROJECT—10/16/96

DAY 7	DAY 13	DAY 15	DAY 16	DAY 18	DAY 19	DAY 20	DAY 22	DAY 38
COMPLETE- MODIFI- CATION OF PROTOTYPE TO PRODUC- TION DESIGN	INSTALL 3D SYSTEM INTO PRODUCTION PROTOTYPE	FINISH DEBUG CLIENT DEMO		FINISH MODIFI- CATIONS (CLIENT REQUESTS)	FINISH DEBUG —FINAL DESIGN	SHOW FINAL TO CLIENT	FINISH PARTS LIST AND ORDER PARTS	PARTS PROCURED
DAY 39	DAY 60 (DAY 81)	DAY 61 (DAY 82)	DAY 66 (DAY 87)	DAY 80 (DAY 97)	DAY 86 (DAY 112)			
START BUILD 30-60 UNITS @ 10 UNITS/WK	FINISH 30 UNITS (?)	START INSTALL SOFTWARE	TEST FINISHED SYSTEM	FINISH INTEGRATE MOTION MINUS SOFTWARE	FINISH CRATING AND SHIPPING			

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Exhibit A

Fantasy FactoryCOMMENCING UPON NOTICE
BY PHILIP MORRIS**PRODUCTION TIMELINE—30 UNITS—DOUBLE CHAIR DESIGN—P.M. PROJECT—10/16/96**

DAY 7	DAY 13	DAY 15	DAY 16	DAY 18	DAY 19	DAY 20	DAY 22	DAY 38
COMPLETE MODIFICATION OF PROTOTYPE TO PRODUCTION DESIGN	INSTALL 3D SYSTEM INTO PRODUCTION PROTOTYPE	FINISH DEBUG CLIENT DEMO	CLIENT DEMO	FINISH MODIFICATIONS (CLIENT REQUESTS)	FINISH DEBUG FINAL DESIGN	SHOW FINAL DESIGN TO CLIENT	FINISH PARTS LIST AND ORDER PARTS	PARTS PROCURED
<hr/>								
DAY 39	DAY 60	DAY 61	DAY 66	DAY 80	DAY 100			
START BUILD 30 UNITS 2- CHAIR DESIGN @ 10 UNITS/WEEK	FINISH 30 UNITS	START INSTALL SOFTWARE AND EQUIPMENT INTO COMPUTERS	TEST FINISHED SYSTEM MINUS EXPERIENCE	FINISH INTEGRATE MOTION SOFTWARE AND CHAIRS	FINISH CRATING AND SHIPPING			

Exhibit B
Budget and Reimbursable Expenses
 Prototype = 65,000
 w/ ~~simulator~~ experience

FANTASY FACTORY SUMMARY BUDGET

Experience Production Budget

(Three Experiences)*	3	cost/unit	
Filming (\$20,000/day 2 day estimate)		40000	120,000
Editing, Sound, Production		13000	39,000
Interactive Computer Work		78000	234,000
			393,000

Simulator Manufacture Budget

(Thirty single seat Simulators)	30	cost/unit	
Structure and Hydraulics		43800	1,314,000
Heads Up Displays (3-D)		3000	90,000
M-JPEG Card for Client's Computers		1500	45,000
Inter-active controllers		4000	120,000
Control Tower		1000	30,000
Connectors and Wiring		2080	61,800
			1,660,000

per unit

(Sixty single seat Simulators)	60	cost/unit	
Structure and Hydraulics		31000	1,860,000
Heads Up Displays (3-D)		2500	150,000
M-JPEG Card for Client's Computers		1000	60,000
Inter-active controllers		1500	90,000
Control Tower		800	48,000
Connectors and Wiring		2000	120,000
			2,328,000

77,600 per unit grp
(2 units)

(Thirty double seat Simulators)	30	cost/unit	
Structure and Hydraulics		52580	1,578,800
Heads Up Displays (3-D)		5000	150,000
M-JPEG Card for Client's Computers		1500	45,000
Inter-active controllers		4000	120,000
Control Tower		1000	30,000
Connectors and Wiring		2080	61,800
			1,983,600

19,83,600 = 66,120/unit

* Does not include location, prop or talent expenses

** Cost of cases not included

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12129075463 P.20/20

10/16/96 12:25 FAX 619 737 6996

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Fantasy Factory

1200 Third Street Suite 1550
San Diego, California 92101

Exhibit C
Form of Invoice

INVOICE

ORDER #		INVOICE #	
DATE		DATE	

P.O. NUMBER

TERMS

SHIP DATE

ITEM #	DESCRIPTION	T	PRICE	AMOUNT

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EXHIBIT "D"**MATERIALS NOT TO BE ASSIGNED****PROTOTYPE:**

- Prototype experience
- Rights to all Simulator design and function;
- Prototype computer, all visual display equipment and 3-D optics
- Motion control software

NON-PROTOTYPE UNITS (if purchased):

- Rights to all Simulator design, manufacture and function;

NON-PROTOTYPE UNITS (if leased):

- All rights in and to any and all of the Simulators, electronics, hardware and software, except for any video or other presentation material which displays any brand or trade name belonging to Philip Morris;
- Any and all equipment or property lent to Fantasy Factory by Philip Morris.

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Exhibit E Demo Experience

SCENE 1

OPENING MARLBORO GRAPHICS

ACTION

VISUAL

TIED-IN SHOT CLOSING WITH DEW ON A.T.V. FADE TO SCENE 2

OPENING SUNRISE, LOOKOUT AT DUNES

SCENE 2.

WIDE SHOT WITH RIDER'S BACK TO CAMERA. RIDER MOUNTS A.T.V. SWITCH TO 1ST PERSON PERSPECTIVE

RIDER WIPING OFF A.T.V. PREPARING TO LEAVE ON MORNING JAUNT. MOUNTS A.T.V.

SCENE 3

1ST PERSON PERSPECTIVE WITH OVER-SHOULDER SHOT OF CAMP GETTING FARTHER AWAY.

REVS UP AND PULLS OUT OF CAMP

SCENE 4

1ST PERSON. TWO SMALL JUMPS AND LEFT-SIDED BERM AT 15°. JUMPS AT 4° FORWARD AND 8° BACKWARD. CONSTANT BOUNCING FROM UNEVEN GROUND

RIDER SEES AND TAKES TWO JUMPS AND A FOLLOWING BERM.

SCENE 5

1ST PERSON. TWO TRACKS, DEPENDING UPON RIDER'S CHOICE. ZOOM IN TO GROUND. SIGN WITH ARROW LYING ON GROUND

RIDER SEES FORK IN TRAIL WITH SIGNPOST, BUT NO SIGN. SIGN ON GROUND READS "DANGER! OPEN MINE." RIDER SEES SIGN, BUT CAN'T TELL WHICH WAY ARROW POINTED

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SCENE 6

ACTION

IF RIDER TURNS RIGHT...
PASSES 2ND SIGN UNNOTICED

IF RIDER TURNS LEFT...
THREE SMALL JUMPS AND TWO
BERMS (SIZE T.B.D.)

VISUAL

"DANGER—QUICKSAND 108 YDS!"

SEES AND TAKES JUMPS AND BERMS

SCENE 7

IF RIGHT...

A.T.V. STOPS SUDDENLY AND IS
PULLED INTO SANDPIT

SEES A.T.V. STOP, FORWARD MOTION
AND TIPS FORWARD AS A.T.V. IS
BURIED IN SAND UP TO TOP OF FRONT
FENDER

IF LEFT...

1ST PERSON. BOUNCING AND JUMP- STRAIGHT AHEAD VIEW OF DUNES
ING WITH LEFT TO RIGHT MOVEMENTS RIDER LOOKS LEFT AND RIGHT, HAV-
IN "S" PATTERN ING FUN

SCENE 8

IF RIGHT... 3RD PERSON

BACK OF RIDER SEEN PULLING A.T.V.
OUT OF PIT. REMOUNTS AND LEAVES.

GO TO 1ST PERSON ON REMOUNT

SCENE 9

1ST PERSON. CAMERA SWEEPS UP TO
SKY, DOWN AND LEFT TO OLD TREE.

RIDER LOOKS UP, SEES THREATENING
STORM CLOUDS. LOOKS LEFT, SEES
OLD DEAD TREE.

COMPUTER LIGHTENING HITS OLD
TREE. FLASH BANG.

BRIGHT FLASH. THUNDERCLAP. TREE
FALLS, BLOCKING RIDER'S PATH.

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SCENE 10**2ND OPTION. RIDER MUST CHOOSE
RIGHT OR LEFT PATH.****IF RIGHT...****RIDER SEES TREE ACROSS PATH****RIDER JUMPS PART OF TREE AND
CONTINUES ON PATH****IF LEFT...****RIDER SEES OLD TIMBERS LYING
ACROSS ROAD****SCENE 11****IF RIGHT...****RIDER SEES CAMPGROUND COMING
CLOSER AS SUN SETS****IF LEFT...****BREAKING TIMBERS AND FADE TO
BLACK****RIDER SEES HIMSELF STARTING
ACROSS TIMBERS. LOUD NOISES, FOL-
LOWED BY DROP. SCENE TURNS
DARK.****SOUND OF MATCH BEING STRUCK.****CLOSE UP SHOT OF MARLBORO
MATCHBOX. PAN FROM MATCHBOX TO
GRAPHIC.****FADE TO BLACK, MARLBORO CLOSING
GRAPHICS.****RIDER LOOKS UP FROM MATCHBOX,
HOLDING MATCH IN FRONT, SEES
"SORRY, GAME OVER! TRY AGAIN."
WRITTEN ON WALL OF PIT.**

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